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September 30, 2010

TO: INTERESTED PARTIES

Enclosed is a copy of Current Legal Digest (CLD) number 2010-3 for your information and review. The annotations included in this CLD are new proposed annotations (underlined) and/or suggested revisions or deletion of existing annotations (indicated by strikeout and underline). After review, please submit any questions, comments, or suggestions for changes *in writing* by **Monday, November 1, 2010**. These may be sent by e-mail using the "Comments Form" on the Board's website ([www.boe.ca.gov/proptaxes/cld.htm](http://www.boe.ca.gov/proptaxes/cld.htm)), fax or mail. Here is the mailing address:

Board of Equalization  
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Please note, the new annotations and/or suggested revisions of existing annotations contained in the enclosed CLD are *drafts* and may not accurately reflect the Board's official position on certain issues nor reflect the language that will be used in the final annotation, if formally adopted.

CLDs are circulated for 30 days, at which time any questions are addressed and/or suggested modifications taken into consideration. After approval of the final version by the Board's Legal Department, the changes will be posted to the Board's website under "Annotations" ([www.boe.ca.gov/proptaxes/annocont.htm](http://www.boe.ca.gov/proptaxes/annocont.htm)). After all proposed changes have been resolved, the CLD will become obsolete and deleted from the website.

This CLD is posted on the Board's website at [www.boe.ca.gov/proptaxes/cld.htm](http://www.boe.ca.gov/proptaxes/cld.htm). Copies of the backup correspondence are linked to each annotation via the annotation number. If a link does not work, please let us know by using the "Comments Form" on our website ([www.boe.ca.gov/proptaxes/cld.htm](http://www.boe.ca.gov/proptaxes/cld.htm)). If you have any questions, please contact Glenna Schultz at 916-324-5836.

Sincerely,

/s/ David J. Gau

David J. Gau  
Deputy Director  
Property and Special Taxes Department

DJG/grs  
Enclosure

# PROPERTY AND SPECIAL TAXES DEPARTMENT

## PROPERTY TAXES CURRENT LEGAL DIGEST No. 2010-3

September 30, 2010

### 220.0000 CHANGE IN OWNERSHIP

[220.0081](#) Corporate Property Transfers. Property transferred to a nonprofit ~~between~~ public benefit corporations ~~by an affiliated nonprofit public benefit corporation~~ is excluded under Revenue and Taxation Code section 62(a)(2) if the members of the transferor corporation were identical to the members of the transferee corporation before and after the transfer. In the event that neither corporation has members, section 62(a)(2) applies if the transferor corporation's board of directors was identical to the transferee corporation's board of directors both before and after the transfer. Although the plain language of sections 62(a)(2) and 64 each require the tracking of ownership interests in legal entities, it is reasonable to equate public benefit corporation membership, or directorship when there are no members, to ownership for purposes of section 62(a)(2) and section 64. The members or directors of the transferee corporation then become "original co-owners" in the surviving entity and each member or director's percentage of ownership is measured by his or her voting interest percentage. If a voting interest change of more than 50 percent in the members or directors of the public benefit corporation occurs, there would be a change in ownership of the property previously excluded under section 62(a)(2). If a single member or director obtains more than 50 percent of the voting interest, the public benefit corporation would undergo a change in control pursuant to section 64(c)(1).

~~Section 64(b) is inapplicable since it applies only to corporations which have shares of stock and not to nonprofit public benefit corporations to public benefit corporations because public benefit corporations cannot meet the definition of an affiliated group since they do not issue stock, and therefore, cannot be connected through stock ownership. C 8/5/1983; C 6/2/2010.~~

[220.0438](#) Nonprofit Mutual Benefit Corporation. ~~Where there is no stock ownership in instances involving nonprofit mutual benefit corporations, members of those corporations have possessory rights to the corporation's real property and are not limited to use of the corporation's real property for corporate purposes; the nature of the relationship for purposes of change in ownership is not that of a corporation and its shareholders but rather, that of a tenancy in common in which each co-owner's property interest is terminable and/or transferable. Thus, as in the case of tenancy in common interests, the creation, transfer or termination of membership interests should be changes in ownership of the interest transferred. C 4/3/2002.~~

~~Delete - The theory that absence of stock ownership automatically grants members of a mutual benefit corporation possessory rights to the corporation's real property is incorrect..~~

[220.0439](#) Nonprofit Mutual Benefit Corporation. If membership in a nonprofit mutual benefit corporation does not convey an interest in real property akin to beneficial ownership, as in a mere license to use the property, the transfer of a membership interest in the corporation is not a change in ownership of any of the property owned by the corporation pursuant to Revenue and Taxation Code section 64(a). However, if members are granted sufficient rights to real property, such as exclusive use and development rights, as well as the right to buy and sell specific property, so that beneficial ownership is conveyed, a transfer of such

membership constitutes a change in ownership of the property to which that membership gives rights.

Since mutual benefit corporations are "legal entities" within the meaning of section 64, the provisions of section 62(a)(2) and section 64(d) also apply. The proportional ownership interest should be measured by members, or by the board of directors if there are no members. The members or directors become "original co-owners" in the mutual benefit corporation such that if a voting interest change of more than 50 percent in the members or directors occurs, there would be a change in ownership of the property previously excluded under section 62(a)(2). If a single member obtains more than 50 percent of the voting interest in a mutual benefit corporation, the corporation would undergo a change in control pursuant to section 64(c)(1). C 6/2/2010.

#### **490.0000 GOVERNMENT-OWNED PROPERTY**

**490.0001 Charter Schools.** A charter school operated by a nonprofit public benefit corporation is not a state or local government entity and, therefore, does not qualify for a property tax exemption as government-owned property under California Constitution article XIII, section 3(a) and (b). However, charter schools may qualify for the public schools property tax exemption pursuant to California Constitution article XIII, section 3(d) and Revenue and Taxation Code section 202(a)(3). C 12/18/2009.

#### **515.0000 HOUSEHOLD FURNISHINGS**

**515.0010 Residential Care Facilities.** Revenue and Taxation Code section 224 provides that the personal effects exemption does not apply to property held or used in connection with a trade, profession, or business. Therefore, assessment of personal property owned by the licensee of a residential care facility and used in connection with the facility is an assessment to which other family dwellings are subject. However, the fact that a licensee operates a residential care facility out of his or her own home should not preclude application of the exemption for personal effects and household furnishings held for the licensee's own personal use, such as personal bedroom furnishings. C 12/4/2000; LTA 8/1/1989 (No. 89/58).

#### **630.0000 PERSONAL PROPERTY**

**630.0001 Community Care Facility.** The prohibitions in the Health and Safety Code against local licenses, fees, or taxes for the privilege of operating a care facility serving six or fewer persons are not applicable to property taxes imposed upon either real or personal property pursuant to section 1 of article XIII of the California Constitution or the Revenue and Taxation Code. C 9/16/1987; LTA 8/1/1989 (No. 89/58).

#### **610.0000 NEWLY CONSTRUCTED PROPERTY**

**610.0024.005 Disabled Resident Access Exclusion.** The American with Disabilities Act and the California Building Code provide specific formulas and guidelines for handicapped accessibility. Each room added and its function should be analyzed in light of the relevant accessibility guidelines and the requirements of the disabled residents of the home. If the added square footage exceeds these specifications and guidelines, it would be reasonable

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to determine that only portions of the rooms added qualify for the exclusion. Except to the extent that the exclusion in Revenue and Taxation Code section 74.3 applies, the newly constructed portions of a residence should be reassessed. C 12/3/2009.

## **690.0000 PUBLIC SCHOOLS EXEMPTION**

**690.0004 Charter Schools.** A charter school operated by a nonprofit public benefit corporation is not a state or local government entity and, therefore, does not qualify for a property tax exemption as government-owned property under California Constitution article XIII, section 3(a) and (b). However, charter schools may qualify for the public schools property tax exemption pursuant to California Constitution article XIII, section 3(d) and Revenue and Taxation Code section 202(a)(3). C 12/18/2009.

## **880.0000 WELFARE EXEMPTION**

**880.0105 Fundraising.** Since fundraising is not an exempt purpose in and of itself under Revenue and Taxation Code section 214(a), an organization will not qualify for an organizational clearance certificate if it performs fundraising as one of its primary activities. California courts have long required that the actual purpose and activities of a qualifying organization must be exempt under section 214(a), even if all of the funds produced by the non-qualifying activities are used to further an organization's qualifying purposes. C 12/4/2009.

**880.0278 Single-Member Nonprofit Public Benefit Corporation.** A corporation created to hold property for its single member and/or to provide administrative support services for its single member may be organized and operated for exempt purposes provided all other requirements for an organizational clearance certificate are satisfied. C 12/4/2009.